

**APPROVING AN AMENDMENT TO ORDINANCE 2017-015 AND APPROVAL
OF A SPECIAL USE PERMIT TO ALLOW A RETAIL TOBACCO STORE AT 650
PEACE ROAD, DEKALB, ILLINOIS (BOBBY PEREZ).**

WHEREAS, the City of DeKalb (the “City”) is a home rule unit of local government and may exercise any power and perform any function pertaining to its government and affairs pursuant to Article VII, Section 6, of the Illinois Constitution of 1970; and

WHEREAS, Bobby Perez (the “Petitioner”), is the lessee of property located at 650 Peace Road Unit E, DeKalb, Illinois (the “Property”), depicted in the attached and incorporated Exhibit A (the “Tenant Space”), and legally described as follows:

LOT 1 OF ASPEN RIDGE SUBDIVISION, A SUBDIVISION OF PART OF THE
NORTHEAST QUARTER OF THE NORTHWEST QUARTER OF SECTION 24,
TOWNSHIP 40 NORTH, RANGE 4 EAST OF THE THIRD PRINCIPAL
MERIDIAN, ACCORDING TO THE PLAT THEREOF RECORDED MAY 3, 1995
IN BOOK “Z” OF PLATS, PAGE 40 AS DOCUMENT NO. 95004207, SITUATED
IN THE CITY OF DEKALB, DEKALB COUNTY, ILLINOIS.

Common Address: 650 Peace Road Unit E., DeKalb, IL 60115; and
Property Identification Number (“PIN”): 08-24-128-024.

WHEREAS, Petitioner petitioned the City to approve an amendment to Ordinance 2017-015 and a special use permit for a retail tobacco store on the Property (the “Petition”); and

WHEREAS, pursuant to due notice, the City’s Planning and Zoning Commission (the “PZC”) held a public hearing on November 20, 2023; and

WHEREAS, the PZC made findings of fact and recommended approving the Petition; and

WHEREAS, the City’s corporate authorities adopt and incorporate by reference the PZC’s findings of fact, find that approving an amendment to Ordinance 2017-015 and a special use permit for the Property is in the public interest for the protection of the public health, safety and welfare, and specifically find that the proposed special use permit conforms with the applicable standards as follows:

**STANDARDS OF A SPECIAL USE – ARTICLE 14.03.05(2) OF THE UNIFIED DEVELOPMENT
ORDINANCE (“UDO”)**

- 1. The proposed special use complies with all provisions of the applicable district regulations.**

The proposed special will comply with all regulations of Ordinance 2017-015 and the “PD-I” District and Article 7.17 “Retail Sale of Tobacco and Related Products” of the UDO. The proposed special use will also comply with Chapter 64 “Smoking Regulations” of the Municipal Code.

- 2. The proposed special use will not be unreasonably detrimental to the value of other property in the neighborhood in which it is to be located or to the public welfare at large.**

The proposed special use will not have a detrimental effect on the adjacent properties or land uses. The site has been zoned “LI” Light Industrial since 1994 and “PD-I” since 2017. The City previously approved the rezoning of the property in 2017 to accommodate a medical cannabis dispensary. The proposed special use is less intense than many of the permitted uses of nearby

properties, many of which have a “HI” Heavy Industrial zoning designation.

The proposed special use meets the recommendations of the City’s 2022 Comprehensive Plan, which indicates Commercial uses for the site. Conditions are suggested in the recommendation that will require Petitioner to obtain a tobacco license from the City, receive approval of a security plan by the Police Department, and ban smoking in the approved tenant space.

- 3. The location and size of the special use, the nature and intensity of the operation involved in or conducted in connection with it, and the location of the site with respect to streets giving access to it are such that the special use will not dominate the immediate neighborhood so as to prevent development and use of neighboring property in accordance with the applicable zoning district regulations.**

The granting of the special use will not dominate the immediate area and will not prevent development on the neighboring properties. Much of the area is already developed with commercial and industrial uses and some retail uses. The intensity of the proposed special use is in line with the existing businesses in the surrounding area.

- 4. Adequate utility, drainage and other such necessary facilities have been or will be provided.**

Public services and utilities are already provided to the subject property. There is adequate parking on-site for the proposed special use.

- 5. The proposed use, where such developments and uses are deemed consistent with good planning practice, or can be operated in a manner that is not detrimental to the permitted developments and uses in the district; can be developed and operated in a manner that is visually compatible with the permitted uses in the surrounding area; shall in all other respects conform to the applicable regulations of the district in which it is located; and is deemed essential or desirable to preserve and promote the public health, safety and general welfare of the City of DeKalb.**

The proposed special use will not be detrimental to the permitted uses in the “PD-I” and “LI” Districts. The proposed special use will be in compliance with the 2022 Comprehensive Plan, UDO, and Municipal Code. Adequate parking is provided on the site. Conditions are suggested in the recommendation that will require the applicant to obtain a tobacco license from the City, receive approval of a security plan by the Police Department and ban smoking in the approved tenant space.

NOW, THEREFORE, BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF DEKALB, ILLINOIS:

SECTION 1: The recitals to this Ordinance are true, material, adopted and incorporated herein as Section 1 to this Ordinance.

SECTION 2: Subject to Petitioner’s compliance with the conditions provided by Section 4 of this Ordinance, the City’s corporate authorities adopt and approve an amendment to Section 4 of Ordinance 2017-015 that deletes and removes the following as Prohibited Uses:

1. Section 4(3)(j): “Drug paraphernalia or “head shop.” or a retail establishment that permits the sale of drug paraphernalia as defined by City Code or state law;” and
2. Section 4(3)(l): “Tobacco, pipe, cigar or cigarette sales, retail tobacco sales, “hookah bar” or other establishment that permits the indoor consumption of any product regulated under Chapter 64 of the City Code;”

SECTION 3: Subject to Petitioner's compliance with the conditions provided by Section 4 of this Ordinance, the City's corporate authorities grant the Petition and approve a special use permit for a retail tobacco store on the Property.

SECTION 4: The City's corporate authorities adopt, approve, authorize, and direct that the approvals provided by Sections 2 and 3 of this Ordinance shall be subject to and conditioned upon compliance with the following conditions:

1. Petitioner and Petitioner's successors and assigns shall obtain a tobacco license from the City prior to selling of tobacco products;
2. No smoking of tobacco, cannabis, or other similar products shall be allowed in the Tenant Space;
3. Petitioner and Petitioner's successors and assigns shall obtain the approval of a security plan (which may comply in the same form and substance as the security plan that is provided for a retail tobacco license or a cannabis business establishment under the City's Municipal Code) for the Property by the City's Police Chief prior to the issuance of an occupancy permit; and
4. Petitioner and Petitioner's successors and assigns shall comply with all applicable laws, rules, regulations, and provisions of the City's Municipal Code pertaining to the development, maintenance, operation, and taxation of a retail tobacco store on the Property.

SECTION 5: The City's corporate authorities authorize and direct the City Manager or designee to record this Ordinance with the DeKalb County Clerk and Recorder.

SECTION 6: This Ordinance and each of its terms shall be the effective legislative act of a home rule municipality without regard to whether such ordinance should (a) contain terms contrary to the provisions of current or subsequent non-preemptive state law, or (b) legislate in a manner or regarding a matter not delegated to municipalities by state law. It is the intent of the City's corporate authorities that to the extent that the terms of this Ordinance should be inconsistent with any non-preemptive state law, this Ordinance shall supersede state law in that regard within its jurisdiction.

SECTION 7: This Ordinance shall be in full force and effect from and after its passage and approval as provided by law.

PASSED BY THE CITY COUNCIL of the City of DeKalb, Illinois at a Regular meeting thereof held on the 27th day of November 2023 and approved by me as Mayor on the same day. First Reading passed by a 7-1 roll call vote. Aye: Zasada, Larson, Smith, Perkins, McAdams, Verbic, Barnes. Nay: Walker. Second Reading waived by a 7-1 roll call vote. Aye: Zasada, Larson, Smith, Perkins, McAdams, Verbic, Barnes. Nay: Walker.

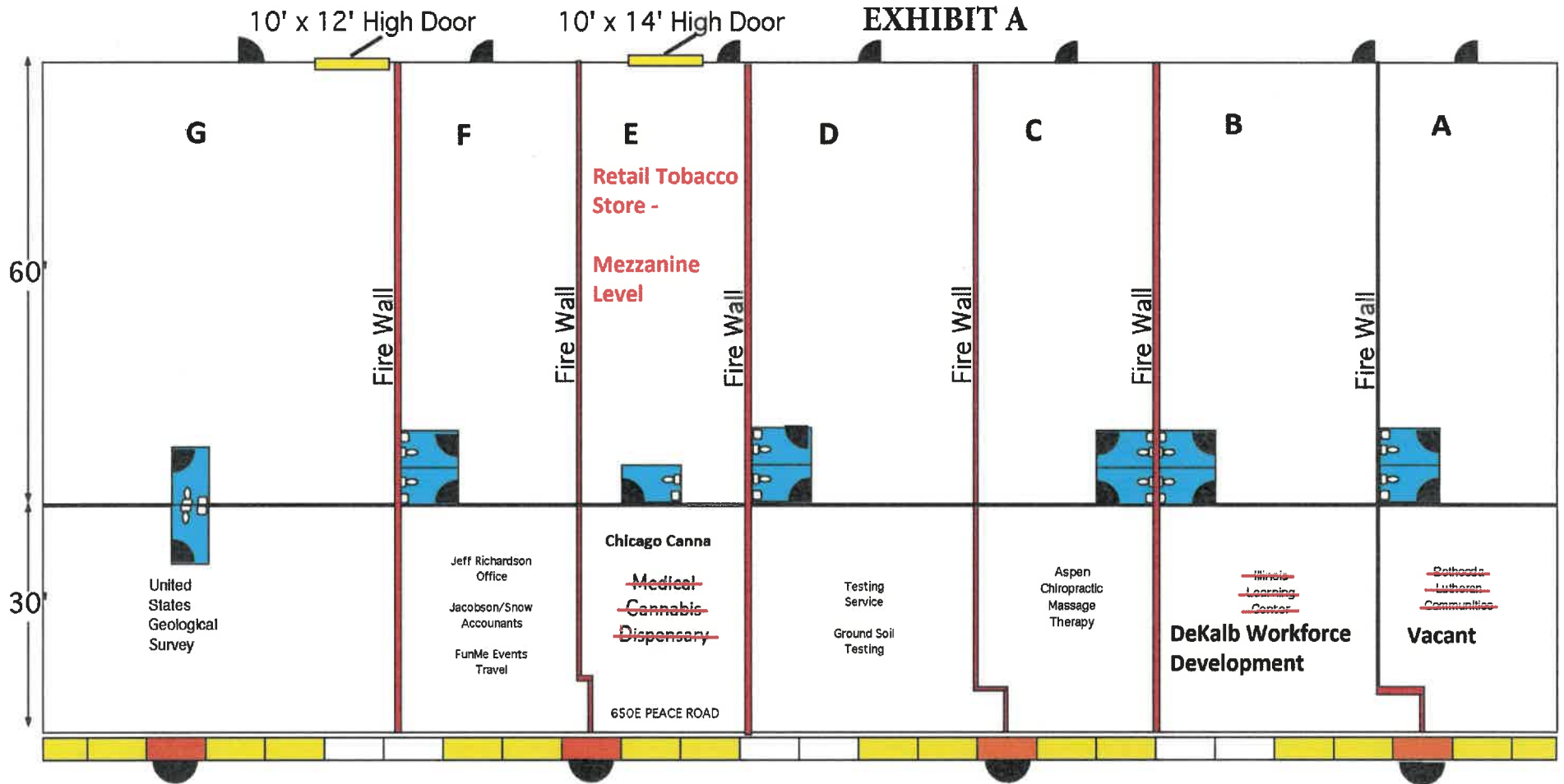



COHEN BARNES, Mayor

ATTEST:



Ruth A. Scott, Executive Assistant



ORDINANCE 2017-015

PASSED: MARCH 13, 2017

AUTHORIZING A ZONING MAP AMENDMENT FROM "LI" LIGHT INDUSTRIAL DISTRICT, TO "PD-I" PLANNED DEVELOPMENT – INDUSTRIAL DISTRICT, TO ALLOW FOR A MEDICAL CANNABIS DISPENSARY (JUSTICE GROWN) IN A MULTI-TENANT BUILDING LOCATED AT 650 PEACE ROAD.

WHEREAS, the City of DeKalb is a home rule municipality with the power and authority conferred upon it by the Illinois Municipal Code and the Constitution of the State of Illinois; and

WHEREAS, Justice Grown, (herein referred to as "Petitioner") of the property commonly known as 650 Peace Road, Unit E, DeKalb, Illinois (herein referred to as "Subject Property"), has petitioned the City of DeKalb for approval of a zoning map amendment from the "LI" Light Industrial District to the "PD-I" Planned Development – Industrial District, to allow a medical cannabis dispensary in an approximately 2,960-square-foot tenant space in a multi-tenant building on the Subject Property; and

WHEREAS, pursuant to proper legal notice, a public hearing was conducted by the Planning and Zoning Commission on February 22, 2017; and

WHEREAS, the City and Petitioner have conducted all required public hearings before the Planning and Zoning Commission of the City of DeKalb for the rezoning for the Property, and have otherwise satisfied all conditions precedent to the adoption of this Ordinance; and

WHEREAS, the City Council has reviewed and adopts the following findings of fact of the Planning and Zoning Commission of the City of DeKalb, finds that the proposed rezoning is in conformance with the applicable zoning factors contained therein, and finds that approval of the rezoning for the Property is in the public interest and promotes the public health, safety and welfare;

STANDARDS OF REZONING

1. The proposed rezoning conforms to the Comprehensive Plan, or conditions have changed to warrant the need for different types of land uses in that area. The proposed rezoning is appropriate considering the length of time the property has been vacant, as originally zoned, and taking into account the surrounding areas trend in development.

The 2005 Comprehensive Plan recommends the subject site for commercial use. Staff believes that the proposed development meets the intent of the City's Comprehensive Plan. The locations where a medical cannabis dispensary can locate and meet all of the setback requirements is very limited. The area near the Peace Road and Pleasant Street

intersection is one of those areas. The proposed dispensary will be locating in a multi-tenant building with excess parking and at a highly visible intersection.

2. The proposed rezoning conforms to the intent and purpose of the Unified Development Ordinance.

The proposed use and zoning of Planned Development – Industrial will comply with the regulations of the UDO except for the two exemptions related to the minimum lot size for a Planned Development and the type of building medical cannabis dispensaries can locate in. The exceptions to the UDO are justified based upon the limited areas where medical cannabis dispensaries can locate and the precautions that will be taken regarding building security and safety.

3. The proposed rezoning will not have a significantly detrimental effect on the long-range development of adjacent properties or adjacent land uses.

Much of the surrounding area is already developed. The proposed use will be locating in a multi-tenant building that is currently fully occupied. There are two other similar multi-tenant buildings to the north. The locations where a medical cannabis dispensary can locate and meet all of the setback requirements is very limited. The proposed rezoning should not have a detrimental effect on the adjacent properties or land uses.

4. The proposed rezoning constitutes an expansion of an existing zoning district that, due to the lack of undeveloped land, can no longer meet the demand for the intended land uses.

The subject property is currently zoned "LI" Industrial District. Rezoning the property to "PD-I" Planned Development – Industrial will allow a use that has very limited locations where it can be established in the City.

5. Adequate public facilities and services exist or can be provided.

The proposed use will be one of nine tenants in a multi-tenant commercial building. Adequate public services are already provided to the subject property and tenant space.

NOW, THEREFORE, BE IT ORDAINED BY THE CITY COUNCIL of the City of DeKalb, Illinois as follows:

Section 1. The recitals set forth in the preamble are hereby incorporated herein by reference and made a part of this Ordinance.

Section 2. This Ordinance is limited and restricted to the Subject Property legally described as follows:

LOT 1 OF ASPEN RIDGE SUBDIVISION, A SUBDIVISION OF PART OF THE NORTHEAST QUARTER OF THE NORTHWEST QUARTER OF SECTION 24,

TOWNSHIP 40 NORTH, RANGE 4 EAST OF THE THIRD PRINCIPAL MERIDIAN, ACCORDING TO THE PLAT THEREOF RECORDED MAY 3, 1995 IN BOOK "Z" OF PLATS, PAGE 40 AS DOCUMENT NO. 95004207, SITUATED IN THE CITY OF DEKALB, DEKALB COUNTY, ILLINOIS.

The aforementioned legal description is comprised of Parcel Identification Number (PIN) 08-24-218-024 and commonly known as 650 Peace Road, DeKalb, IL 60115.

Section 3: A zoning map amendment from "LI" Light Industrial District to "PD-I" Planned Development-Industrial District to permit a medical cannabis dispensary in the tenant space as shown on Exhibit A, exceptions to the UDO regarding minimum lot size for a Planned Development and to allow a medical cannabis dispensary in a multi-tenant building are hereby granted for the Subject Property and subject to the conditions listed in Section 4 of this Ordinance.

Section 4: The approval herein is granted subject to the following conditions:

- 1) Additional permitted and special uses shall be those as listed in the "LI" Light Industrial District.
- 2) Setbacks, building lines, floor area ratios, building dimension limitations, height restrictions and other similar lot/building size/shape restrictions and regulations shall meet those standards as set forth in the "LI" Light Industrial District and the UDO except as provided below:
 - a) Article 5.13.06 – The minimum site size for a Planned Development shall be reduced from 2 acres to 1.25 acres.
 - b) Article 7.18.04(6) – The medical cannabis dispensary shall be allowed in a multi-tenant building.
- 3) Prohibited Uses:
 - a) Adult oriented uses; adult bookstores or other establishment displaying, leasing, trading, selling pornographic materials as defined in the UDO, whether as a principal use or accessory to an allowed principal use;
 - b) Animal boarding;
 - c) "Second-hand", resale or consignment store;
 - d) Fire, bankruptcy sale, wholesale, overstock auction house or their equivalent;
 - e) Massage parlor;

- f) Dollar stores, discount department stores, or wholesale establishments;
- g) Currency exchange, money wiring, check cashing facility or equivalent;
- h) Auto title loan or post dated check or payday loan facility or equivalent, unless associated with and incorporating the full-services of a federally-insured bank, credit union or savings and loan;
- i) Bar, tavern, package liquor store, dance hall or any other facility;
- j) Drug paraphernalia or "head shop" or a retail establishment that permits the sale of drug paraphernalia as defined by City Code or state law;
- k) Community residences;
- l) Tobacco, pipe, cigar or cigarette sales, retail tobacco sales, "hookah bar" or other establishment that permits the indoor consumption of any product regulated under Chapter 64 of the City Code;
- m) Group homes;
- n) Parking lots, as a principal use;
- o) Pawn shops;
- p) Cemeteries and mausoleums;
- q) Funeral homes and mortuaries;
- r) Rooming houses or lodging houses;
- s) Automobile or motor vehicle/recreational vehicle/implement repair, service, sales, rentals or maintenance;
- t) Contractor offices associated with onsite storage of vehicles, supplies or equipment, building material or equipment sales, building or equipment service or maintenance offices, or the equivalent;
- u) Warehouses, whether accessory to a retail use, or self-service storage;
- v) Residential uses;
- w) Tattoo, body art or body modification related uses;
- x) Car washes, drive-thrus;

- y) Outdoor, drive-thru or standalone automatic teller machines (except for ATMs wholly concealed within the primary structure on the Property and accessible only from within the structure).
 - z) Any use not expressly identified as a Permitted Use.
- 4) This approval is expressly contingent and conditioned upon this applicant:
- a) Receiving a state-issued medical cannabis dispensary license by December 31, 2017.
 - b) Completing all required build-out and tenant improvements within six months after issuance of the state-issued medical cannabis dispensary license (and prior to opening of the facility).
 - c) Executing a site security agreement in form and content acceptable to the Chief of Police within a sixty day period after the issuance of the state-issued medical cannabis dispensary license (and prior to opening of the facility).
 - d) The Petitioner shall submit a proposed exterior signage plan within sixty days of the date of issuance of a state license for the medical cannabis dispensary for review and approval by the Community Development Director. Such proposed signage shall be subject to approval by the Director prior to any installation of the same, and any signage installed shall be maintained in accordance with the approved exterior signage plan (unless a revision is later approved by the City).

The failure of the applicant to satisfy any of the foregoing conditions shall constitute grounds for the Community Development Director to notify the applicant, in writing that the conditions have not been satisfied and that the Ordinance is subject to revocation. Upon receipt of such notice, the applicant may either agree and consent to the revocation of the Ordinance, or may submit to a due process hearing before a hearing officer designated by the Community Development Director. The report of such hearing officer shall be forwarded to the City Council of the City of DeKalb for consideration, and the decision of the City Council shall be final.

- 5) The medical cannabis dispensary approved herein shall be expressly limited to the retail sale of medical cannabis and cannabis-infused products pursuant to a lawfully issued prescription for the same based upon the current provisions of the Illinois Compassionate Use of Medical Cannabis Pilot Program, 410 ILCS 130/1, et. seq. This Ordinance shall not authorize the growing, production, processing creation, cultivation or compounding of cannabis or cannabis-based products, nor shall it authorize the retail sale of non-medical cannabis (i.e. any cannabis or cannabis-based product sold without requirement of a medical prescription, whether or not such sale is lawful under then-current applicable state or local laws).

Further, this Ordinance shall not authorize any consumption of cannabis or cannabis-based products on-site, except as otherwise required by a superior governmental mandate.


Section 5. All ordinances or portions thereof in conflict with this ordinance, including the prior versions of the ordinances included above, are hereby repealed.



Section 6. Should any provision of this Ordinance be declared invalid by a court of competent jurisdiction, the remaining provisions will remain in full force and affect the same as if the invalid provision had not been a part of this Ordinance.

Section 7. That all provisions of the Unified Development Ordinance shall remain in full force and effect and this Ordinance shall take effect upon its passage and approval according to Law. The City Clerk or designee shall record a copy of this Ordinance included herein after execution of this Ordinance.

PASSED BY THE CITY COUNCIL of the City of DeKalb, Illinois at a Regular meeting thereof held on the 13th day of March, 2017, and approved by me as Mayor on the same day. Passed on First Reading by an 8-0 roll call vote. Aye: Jacobson, Finucane, Marquardt, Snow, Noreiko, Baker, Faivre, Rey. Waiver of Second Reading passed by an 8-0 roll call vote. Aye: Jacobson, Finucane, Marquardt, Snow, Noreiko, Baker, Faivre, Rey.

ATTEST:


JENNIFER JEEP JOHNSON, City Clerk

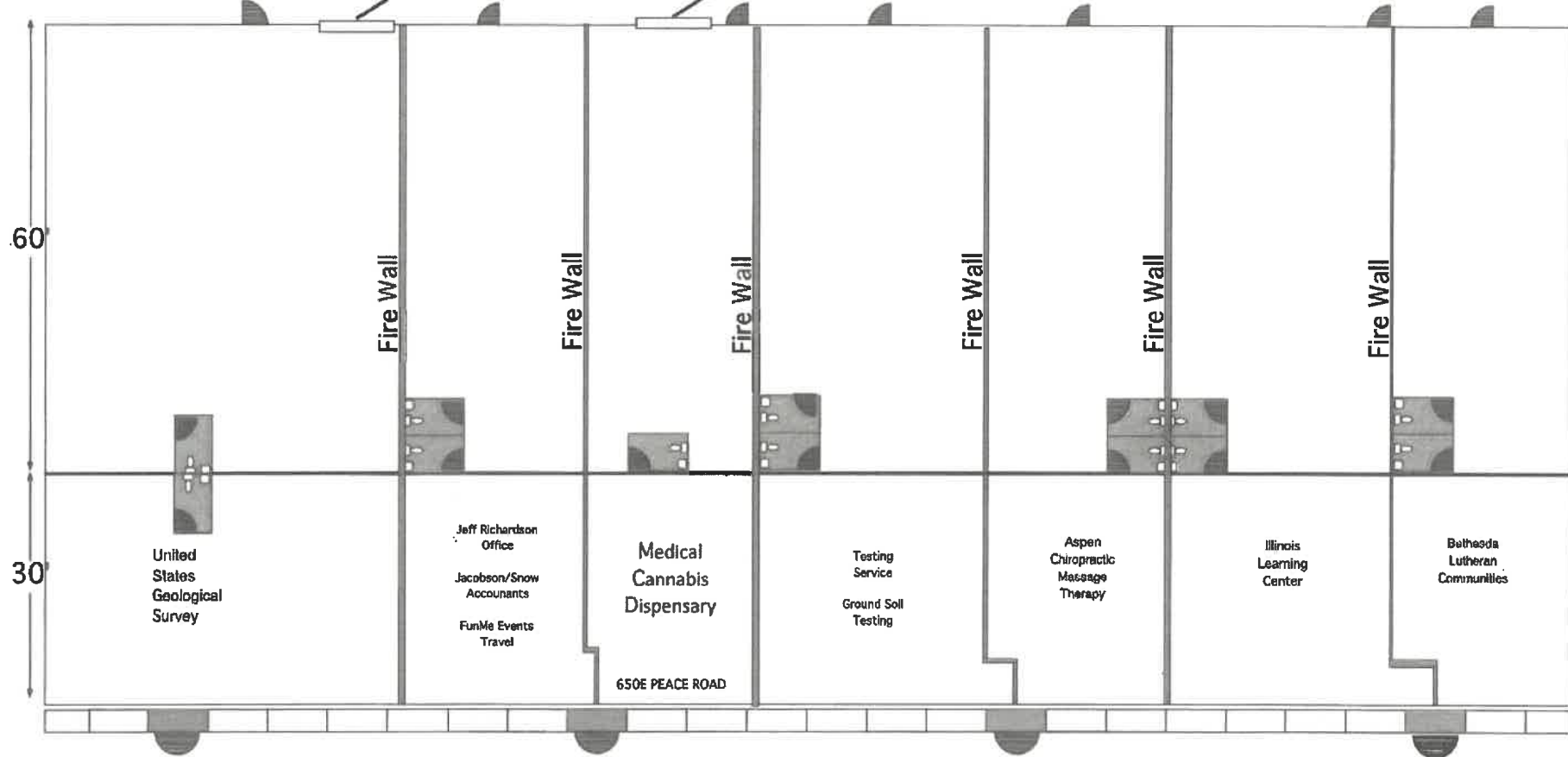

JOHN A. REY, Mayor

10' x 12' High Door

10' x 14' High Door

EXHIBIT A

Ordinance 2017-016
Page 7





2023008625

TASHA SIMS
RECORDER - DEKALB COUNTY, IL
RECORDED: 12/7/2023 09:25 AM

REC FEE: 55.00
PAGES: 12

STATE OF ILLINOIS)
COUNTY OF DEKALB) SS
CITY OF DEKALB)

CERTIFICATION

I, **RUTH A. SCOTT**, am the duly qualified and appointed Executive Assistant of the City of DeKalb, DeKalb County, Illinois, as authorized by Local Ordinance 2019-059, and as such Executive Assistant, I maintain and am safe-keeper of the records and files of the Mayor and City Council of said City.

I do hereby certify that the attached hereto is a true and correct copy of:

ORDINANCE 2023-055

**APPROVING AN AMENDMENT TO ORDINANCE 2017-015 AND
APPROVAL OF A SPECIAL USE PERMIT TO ALLOW A RETAIL
TOBACCO STORE AT 650 PEACE ROAD, DEKALB, ILLINOIS (BOBBY
PEREZ).**

PASSED BY THE CITY COUNCIL of the City of DeKalb, Illinois, on the 27th day of November 2023.

WITNESS my hand and the official seal of said City this 7th day of December 2023.

RUTH A. SCOTT, Executive Assistant/Recording Secretary



Prepared by and Return to:

City of DeKalb
City Manager's Office
Attention: Ruth A. Scott
164 E. Lincoln Highway
DeKalb, Illinois 60115